

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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| PATIENT CARE ASSOCIATES LLC, a/s/o B.C., A.R., and K.W., | : | Civil Action No. |
| | : | (NJ State Docket No. BER-L-1041-13) |
| | : | |
| Plaintiff, | : | |
| | : | <u>NOTICE OF REMOVAL OF A CIVIL ACTION</u> |
| | : | |
| NESTLÉ; ABC CORP. (1-10) (said names being fictitious and unknown entities) | : | |
| | : | |
| Defendant. | : | |
| | : | |

NOTICE OF REMOVAL OF A CIVIL ACTION

PLEASE TAKE NOTICE that defendant Nestlé Waters North America Inc. (“the Removing Party” or “Defendant”) hereby removes this action, pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446, from the Superior Court of New Jersey, Bergen County, Law Division (No. BER-L-1041-13) to the United States District Court for the District of New Jersey, and respectfully states the following grounds for removal:

State Court Proceedings

1. Plaintiff Patient Care Associates LLC (“Plaintiff”), on its own behalf and allegedly as assignee of others identified only by their initials, commenced this action in the Superior Court of New Jersey, Bergen County, Law Division, by filing

a complaint (the “Complaint”) on or about February 6, 2012 with the Clerk of the Superior Court, Bergen County (a true copy of the Complaint is attached hereto as Exhibit “A”). The Removing Party is the Defendant in this action.

2. Service of the Summons and Complaint has not yet been properly effected.

3. No other proceedings have taken place in this action.

Nature of Action and Subject Matter Jurisdiction

4. Plaintiff brings this action on its own behalf, allegedly as the assignee of claims by others identified in the Complaint only by what appear to be initials, which assignors were beneficiaries of a plan of group health insurance issued to employees and their participating family members. Plaintiff seeks compensatory damages, interest, an award of costs, litigation expenses and attorneys fees, based upon alleged violations of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001, et seq., and negligent misrepresentation.

5. This court has original jurisdiction pursuant to 28 U.S.C. § 1331 as this civil action arises under the laws of the United States, to wit, 29 U.S.C. § 1001, et seq. The Complaint recites that the First Count and Second Count “arises under the Employee Retirement Income Security Act of 1974 [], 29 U.S.C. § 1101, et seq.” (Complaint ¶ 21)

6. This court also has original jurisdiction pursuant to 28 U.S.C. § 1332(a) because the Plaintiff is a citizen of a different state than the Defendant and the matter in controversy exceeds the sum of \$75,000 dollars, exclusive of interest and

costs. The allegations of the Complaint seek recovery, exclusive of interest, costs, and attorneys fees, of \$114,484.70 (Complaint, ¶ 16).

7. Plaintiff is a citizen of the State of New Jersey, as it alleges in its Complaint that it is an ambulatory surgical center having its office in Englewood, New Jersey.

8. Defendant is a corporation organized under the laws of the State of Delaware and has its principal place of business at 900 Long Ridge Road, Building 2, Stamford, Connecticut 06902.

9. This court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337 over the other claim for negligent misrepresentation because that claim is so related to the claim under 29 U.S.C. § 1001, et seq. that it forms part of the same case or controversy under Article III of the United States Constitution.

10. The Federal District Court for the District of New Jersey is the district court for the district embracing the place where the action is pending.

11. This Notice is timely filed in accordance with 28 U.S.C. §1446(b)(1) because it was filed within 30 days of the first receipt by Defendant of a copy of the Complaint.

12. There are no other persons or entities named as a defendant in this action other than the Removing Party.

WHEREFORE, Defendant Nestlé Waters North America Inc. hereby removes this action from the Superior Court of New Jersey, Law Division, Bergen County, to the United States District Court for the District of New Jersey.

March 12, 2013

Respectfully submitted,

/s/ Samuel Feldman

Samuel Feldman

ORLOFF, LOWENBACH, STIFELMAN
& SIEGEL, P.A.

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